

1 ה"ב

2 **The Law Offices of Kissinger N. Sibanda, Esq.**

3 P.O. Box 714

4 Livingston, NJ 07039

5 Kissinger N. Sibanda, DC Bar #1017426

6 Telephone 973-689-5952

7 Email: ksibanda@temple.edu

8 December 11, 2020

9
10
11 **United States District Court**
12 **Southern District of New York**
13

14 MOUSSA DIARRA,) Civil No. 1:16-civ-07075(VSB)
15 *Plaintiff,*) (closed)

16 V.)
17)

18 CITY OF NEW YORK,)
19 *Defendant.*) **FINAL EQUEST FOR**
20) **PERMISSION TO SEND**
21) **COPIES OF SEALED**
22) **EVIDENCE TO DOJ AND NY**
23) **COMPTROLLER'S OFFICE.**
24)
25)
26)
27)
28)

Ref: Final Request to submit copies of Sealed Evidence to DOJ and New York Comptroller's Office:

Judge Vernon Broderick:

Mr. Diarra makes this final request for permission to submit electronic copies of sealed photos of Mrs. Diarra to New York Comptroller's office and Department of Justice, as part of pending notice of claim and crime report. Mr. Diarra makes this request in light of the three other requests which have been ignored by chambers. See ECF-DOCKET 264-266. Furthermore, as this is notice that this is the last request. Mr. Diarra will be proceeding for a writ of mandamus on the matter with the Second Circuit in due course.

This is the sixth request to transmit email copies of sealed documents held in custody by Judge Broderick to City of NY and DOJ, see ECF 261- ECF 265 dated April 1 2020, April 7 2020, May 7 2020 and August 14th, 2020. All these requests were summarily ignored. In light of COVID-19, a response from chambers is necessary in this matter because the statute of limitation for his notice of claim is not exhausted.

Pursuant to the Fourteenth Amendment's Equal Protection clause Mr. Diarra has a right to obtain and adduce evidence in proceedings to which he is a party, such as the administrative hearing with NY Comptroller's office, as well as part of his complaint against you with the DOJ. See, *Jencks v. United States*, 353 U.S. 657 (1957); *Giglio v. United States*, 405 U.S. 150 (1972); and *Brady v. Maryland*, 373 U.S. 83 (1963).

Furthermore, pursuant to *United States v. Carolene Products Company*, 304 U.S. 144 (1938) (see footnote 4); stating the limits and process for

1 substantive due process. The taking of the right to equality (here, Mr.
2 Diarra's right to present evidence in his case), should comply with
3 *Carolene*. The legal reasons for refusal of evidence from a branch of
4 government, here Chambers, to give evidence pertinent for Mr. Diarra's
5 second notice of claim with the City of New York, as well as the pending
6 DOJ investigation should be clearly stated as it directly affects Mr.
7 Diarra's legal rights and remedies.

8 Relevancy of sealed photos¹:

9
10
11 Photos of Mrs. Diarra were previously sealed by this office. See,
12 sealing order - Exhibit 2.

13
14 The photos are relevant under FRE 401 because they show that no
15 rape kit was ever made at the time of the actual arrest / incident – no
16 photos of Mrs. Diarra were taken before the arrest - instead photos
17 showing Mrs. Diarra's healthy genitalia were then taken four-five
18 months later. However, Mr. Diarra was arrested for genital cutting.

19 If this request is ignored, Mr. Diarra will be proceeding,
20 accordingly, with a writ of mandamus.

21
22 DATED: LIVINGSTON, NEW JERSEY
23 December 11th, 2020
24

25
26 ¹ The affirmation of the District Court's order by the Second Circuit is not
27 binding precedent and has little or no jurisprudential value, depending on
28 the District judge's interpretation – rendering the District Court's order in
the first Diarra matter non-binding precedent. By its nature, this order is
subject to a weaker standard of reversal should the summary order come under
review by a different panel of the Second Circuit or a different District
judge.

Respectfully Submitted,

/s/ Kissinger N. Sibanda
KISSINGER N. SIBANDA, ESQ.,
Attorney for the Plaintiff
P.O Box 714
Livingston, NJ 07039
Telephone: (973) 689-5952
Email: ksibanda@temple.edu

TO: **BY ECF**

Honorable Vernon S. Broderick
United States District Court
Southern District of New York
40 Foley Square,
Room 415 New York, NY 10007

VIA ECF

Cooperation Counsel - James Johnson
New York Law Department
Valerie E. Smith Esq (Assigned)
Attorney for Defendant
100 Church St.
New York, NY 10007

1
2
3 **CC: COLLEN McMAHON**
4

5 Chief judge SDNY.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28